

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:03CR49-8-MU

UNITED STATES OF AMERICA

vs.

MICHAEL HENDERSON (8)

ORDER

This matter is before the court upon remand from the Fourth Circuit Court of Appeals for this court to make a determination as to whether Defendant has shown excusable neglect or good cause for the untimely filing of his notice of appeal.

Defendant is required to file his notice of appeal within ten days after entry of judgment. See Fed. R. App. P. 4(b)(1)(A)(i). This time period may be extended by the court for an additional thirty days upon a finding of good cause or excusable neglect. Fed. R. App. P. 4(b)(4). In this case, the court entered its Amended Judgment on January 13, 2006. Defendant filed his *pro se* notice of appeal on February 6, 2006, outside of the ten day time limit, but within the thirty- day excusable neglect period.

In his notice of appeal the Defendant states "The Defendant has not yet received the Court's nunc pro tunc Judgment and is therefore uncertain as to the date on which it will have issued. Accordingly, he furnishes this Notice at the first available time upon receiving the Court's vacatur on Monday, January 30, 2005." Defendant was incarcerated at the time the court's Amended Judgment issued.

The court finds good cause to extend the time for the filing of Defendant's notice of appeal. Because of his incarceration, Defendant did not receive the court's Amended Judgment in a timely manner and thus was unaware of his need to file his notice of appeal within ten days of January 13, 2006.

IT IS THEREFORE ORDERED that good cause exists for extending the ten-day appeal period pursuant to Fed. R. App. P. 4(b)(4).

Signed: December 21, 2006



Graham C. Mullen  
United States District Judge

